

Panaji, 3rd April, 1975 (Chaitra 13, 1897)

SERIES I No. 1

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN
AND DIU

Labour and Information Department

Notification

LID/1909/72/73/335

Whereas certain draft amendment Rules further to amend the Goa, Daman and Diu Contract Labour (Regulation and Abolition) Rules, 1972 were published as required by sub-section (1) of Section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), at page 412 of the Official Gazette, Series I, No. 24, dated 12-9-1974 under the Notification of the Labour and Information Department, Government of Goa, Daman and Diu, No. LID/1909/72/74/1087 dated 6-9-1974, inviting objections or suggestions from any person likely to be affected thereby within 30 days from the date of publication of the Notification in the Official Gazette.

And whereas the said Gazette was made available to the public on 12th September, 1974.

And whereas the objections and suggestions received from the public on the said draft have been considered by the Government.

Now, therefore, in exercise of the powers conferred by Section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Government of Goa, Daman and Diu hereby makes the following Rules, namely:—

1. *Short title and Commencement.*—(1) These rules may be called the Goa, Daman and Diu Contract Labour (Regulation and Abolition) (1st Amendment) Rules, 1974.

(2) They shall come into force at once.

2. *Amendment of rule 37.*—In rule 37 of the Contract Labour (Regulation and Abolition) Rules 1972, for the words and figures "the head of account XXXII—Misc.—Social and Developmental Organisations—Licence Fees", the words and figures "Head of Account 087—Labour and Employment—Fees under Contract Labour (Regulation and Abolition) Rules, 1972" shall be substituted.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

P. Noronha, Under Secretary, Industries and Labour.

Panaji, 22nd March, 1975.

Law and Judiciary Department

Notification

LD/Bill/5/75

The following Act passed by the Legislative Assembly of Goa, Daman and Diu which received the assent of the Administrator of Goa, Daman and Diu on 25th March, 1975 is hereby published for general information.

THE GOA, DAMAN AND DIU SUPPLEMENTARY APPROPRIATION ACT, 1975

(Act No. 5 of 1975) [25th March, 1975]

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu for the services and purposes of the financial year 1974-75.

BE it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Goa, Daman and Diu Supplementary Appropriation Act, 1975.

2. *Issue of Rs. 1,98,88,000 out of the Consolidated Fund of the Union territory of Goa, Daman and Diu for the financial year 1974-75.*—From and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu there may be paid and applied sums not exceeding those specified in column 5 of the Schedule amounting in the aggregate to the sum of one crore, ninety eight lakhs and eighty eight thousand rupees towards defraying the several charges which will come in course of payment during the financial year 1974-75 in respect of the services and purposes specified in column 2 of the Schedule.

3. *Appropriation.*—The sums authorised to be paid and applied from and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu, by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

THE SCHEDULE
(See Sections 2 and 3)

No. of Demand	Services and purposes	Sums not exceeding		
		Voted by Assembly	Charged on the Consolidated Fund of the Union territory of Goa, Daman and Diu	Total
1	2	3	4	5
		Rs.	Rs.	Rs.
1	Union Territory Legislature and Elections ...	23,200	—	23,200
3	Administration of Justice ...	100	30,000	30,100
5	State Excise, Sales Tax and Other Taxes and Duties ...	100	—	100
—	Interest Payments...	—	53,16,000	53,16,000
7	Police and Fire Services ...	12,36,000	—	12,36,000
8	Jails ...	43,000	—	43,000
10	Other General Services ...	99,000	—	99,000
11	Pension ...	15,74,000	—	15,74,000
12	Public Works, Housing and Urban Development ...	22,82,400	—	22,82,400
13	Roads and Bridges	1,99,200	—	1,99,200
15	Medical, Family Planning and Public Health, Sanitation and Water Supply	3,31,400	100	3,31,500
17	Labour and Employment ...	100	—	100
18	Social Security and Welfare, Relief on account of Natural Calamities and Food and Nutrition ...	3,33,800	—	3,33,800
19	Cooperation, Community Development and Compensations and Assignments to Local Bodies and Panchayati Raj Institutions ...	1,72,500	—	1,72,500
21	Agriculture and Allied Services ...	33,94,000	—	33,94,000
23	Industries ...	25,00,000	—	25,00,000
25	Tourism ...	93,600	—	93,600
—	Public Debt ...	—	92,000	92,000
26	Loans and Advances by Union Territory Government ...	21,67,500	—	21,67,500
	Total ...	1,44,49,900	54,88,100	1,98,88,000

**AN
ACT**

to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the Union Territory of Goa, Daman and Diu for the services and purposes of the financial year 1974-75.

(As passed by the Legislative Assembly
of Goa, Daman and Diu)

Secretariat,
Panaji,
25th March, 1975.

B. M. MASURKAR
Secretary to the Government of
Goa, Daman and Diu
Law and Judiciary Department

Legislative Assembly of Goa, Daman and Diu

Legislature Department

LD/B/7/4/571/75

The following Bill which was introduced in the Legislative Assembly of Goa, Daman and Diu on 25th March, 1975 is hereby published for general information in pursuance of the provisions of Rule 136 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

**THE GOA, DAMAN AND DIU APPROPRIATION
(VOTE ON ACCOUNT) BILL, 1975**

(Bill No. 5 of 1975)

A Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu for the services of a part of the Financial Year 1975-76.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty sixth Year of the Republic of India as follows:—

1. **Short title.**—This Act may be called the Goa, Daman and Diu Appropriation (Vote on Account) Act, 1975.

2. **Withdrawal of Rupees Eight crores, sixteen lakhs and sixty four thousand from and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu for the financial year 1975-76.**—From and out of the Consolidated Fund of the Union territory of Goa, Daman and Diu there may be withdrawn sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rupees eight crores sixteen lakhs and sixty four thousand towards defraying the several charges which will come in course of payment during the financial year, 1975-76.

3. **Appropriation.**—The sum authorised to be withdrawn from and out of the Consolidated Fund by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

THE SCHEDULE

(See Sections 2 and 3)

No. of Demand	Services and purposes	Sums not exceeding		
		Voted by Assembly	Charged on the Consolidated Fund of the Union territory of Goa, Daman and Diu	Total
1	2	3	4	5
		Rs.	Rs.	Rs.
1.	Union Territory Legislature and Elections ...	1,55,000	6,000	1,61,000
2.	Miscellaneous General Services ...	14,05,000	82,000	14,87,000
3.	Administration of Justice ...	3,51,000	72,000	4,23,000

1	2	3	4	5
		Rs.	Rs.	Rs.
4. Land Revenue, Stamps and Registration ...	3,02,000	—	3,02,000	
5. State Excise, Sales Tax and Other Taxes and Duties...	3,95,000	—	3,95,000	
6. Taxes on Vehicles...	91,000	—	91,000	
7. Police and Fire Services ...	23,75,000	—	23,75,000	
8. Jails ...	1,57,000	—	1,57,000	
9. Stationery and Printing ...	4,08,000	—	4,08,000	
10. Other General Services ...	74,000	—	74,000	
11. Pension ...	9,70,000	—	9,70,000	
12. Public Works, Housing and Urban Development ...	60,13,000	—	60,13,000	
13. Roads and Bridges...	28,00,000	—	28,00,000	
14. Education, Art and Culture ...	1,24,84,000	—	1,24,84,000	
15. Medical, Family Planning and Public Health, Sanitation and Water Supply ...	85,96,000	—	85,96,000	
16. Information and Publicity ...	1,97,000	—	1,97,000	
17. Labour and Employment ...	2,69,000	—	2,69,000	
18. Social Security and Welfare, Relief on account of Natural Calamities and Food and Nutrition ...	1,80,38,000	—	1,80,38,000	
19. Cooperation, Community Development and Compensations and Assignments to Local Bodies and Panchayati Raj Institutions...	10,35,000	—	10,35,000	
20. Other Economic Services and Mines and Minerals...	3,01,000	—	3,01,000	
21. Agriculture and Allied Services ...	70,77,000	—	70,77,000	
22. Irrigation and Power Projects ...	1,36,34,000	—	1,36,34,000	
23. Industries ...	7,07,000	—	7,07,000	
24. Road and Water Transport Services (including Ports) ...	9,59,000	—	9,59,000	
25. Tourism ...	9,59,000	—	9,59,000	
26. Loans and Advances by the Union Territory Governments ...	17,52,000	—	17,52,000	
Total ...	8,15,04,000	1,60,000	8,16,64,000	

Financial Memorandum

Provision is made in this Bill to appropriate for certain services and purposes expressed in the Schedule during the Financial Year, 1975-76 a sum of Rs. 8,16,64,000, pending discussions and voting of the Demands for Grants for the year 1975-76 by the Legislative Assembly. The amount mentioned above consists of Rs. 4,27,83,000 on Revenue Account, Rs. 3,88,81,000 on Capital Account including Loans and Advances.

Statements of Objects and Reasons

This Bill is introduced in pursuance of Section 31(1) read with Section 29(1) of the Government of Union Territories Act, 1963, to provide for the

appropriation out of the Consolidated Fund of the Union territory of Goa, Daman and Diu of the monies required to meet the expenditure charged on the Consolidated Fund and the grants made in advance by the Goa, Daman and Diu Legislative Assembly in respect of the estimated expenditure of the Government of Goa, Daman and Diu for two months *i. e.*, for the months of April and May, 1975.

The Administrator has, in pursuance of Sub-Section (1) of Section 23 of the Government of Union Territories Act, 1963 recommended to the Legislative Assembly the introduction and consideration of the Bill.

Panaji, SMT. SHASHIKALA KAKODKAR
25th March, 1975. Chief Minister

Assembly Hall, M. M. NAIK
Panaji. Secretary to the Legislative
26th March, 1975. Assembly of Goa, Daman and Diu.

LA/B/7/10/573/75

The following Report of the Select Committee on Bill No. 10 of 1973, The Goa, Daman and Diu Mundkars (Protection from Eviction) Bill, 1973 along with the Bill as amended by the Select Committee which was presented to the Legislative Assembly of Goa, Daman and Diu on 24th March, 1975 is hereby published for general information in pursuance of the provisions of Rule 229 of the Rules of Procedure and Conduct of Business of Legislative Assembly.

(Bill No. 10 of 1973)

A
BILL

to provide for better protection to mundkars including agricultural labourers and village artisans against eviction from their dwelling houses and for granting them the right to purchase the same and to make certain other provisions connected therewith.

COMPOSITION OF THE SELECT COMMITTEE

CHAIRMAN

1. Shri Pratapsingh Rane, Minister for Revenue — Minister in-charge of the Bill.

MEMBERS

2. Shri P. P. Achrekar.
3. Shri V. D. Chodankar.
4. Shri R. H. Naik.
5. Shri D. C. Kuttikar.
6. Shri Eduardo Faleiro.
7. Shri R. S. Fernandes.
8. Shri J. B. Rao.

SECRETARIAT

Shri M. M. Naik — Secretary, Legislature

Government Representatives.

Shri B. M. Masurkar — Law Secretary.
Shri S. R. Arya — Revenue Secretary.

Report of the Select Committee

1. The Chairman of the Select Committee to which Bill No. 10 of 1973 (a Bill to provide for better protection to mundkars including agricultural labourers and Village artisans against eviction from their dwelling houses and for granting them the right to purchase the same) was referred, having been authorised by the Committee to submit the Report on its behalf, present its report with the Bill as amended by the Committee annexed hereto.

2. The Bill was introduced in the Legislative Assembly on 11th April, 1973. The Motion for reference of the Bill to the Select Committee was adopted by the House on 25th September, 1973.

3. The Committee held 21 sittings. In its preliminary meeting held on 14th November, 1973 the Committee decided to invite suggestions from Members of the Legislative Assembly and also from public. Accordingly the Members of the Legislative Assembly were requested through Bulletin Part II and members of the public by a press note, to send their amendments and suggestions, if any, on or before 10th December, 1973. Presidents of all Municipalities and Sarpanches of the Village Panchayats have also been addressed separately with a request to bring the press note to the notice of the members of the Municipality and Village Panchayats respectively. There was a good response to the Committee's request. About 50 memoranda containing suggestions and amendments were received including one from Hon. Member Shri J. A. Rane. The Committee studied these memoranda and heard the representatives of some of the associations in further elucidation of the points contained in their memoranda.

4. The Committee visited some of the dwelling houses of mundkars in Bardez, Tiswadi, Salcete and Mormugao Talukas to have a practical study of the various matters to be dealt in the proposed legislation. The Committee also went on a study tour to the State of Kerala to have a comparative study of the provisions of the Bill and the Kerala Land Reforms Act, 1963, which provided "Kudikidappukars" of that State rights of protection against eviction from their houses and which granted them the right to purchase the same.

5. The provisions of the Bill were scrutinized clause by clause and wherever found necessary changes were made and incorporated in the draft Bill annexed to this report.

6. The observation of the Committee, with regard to the important changes proposed in the Bill are enumerated in the succeeding paragraphs.

Preamble and title. — The year of the Bill has been changed to bring it in conformity with the year of passing. The expression "including agricultural labourers and village artisans" and "connected with the agricultural land" appearing in the preamble have been deleted, as the Bill as reported by the Committee provides for protection to all persons who reside on the bhatkars land with the consent of the bhatkar.

Clause 2(b) and original clause 2(s). — The sub-clause (b) and (s) of clause 2 defines the terms

"agricultural labourer" and "village artisan" respectively. The word "homestead" appearing in the said definitions has been substituted by the word "house" as the term "homestead" has a wider connotation.

New Clause 2(d). — An attempt has been made to define the term "agricultural land" and the remaining sub-clause have been renumbered.

Original Clause 2(e). — The word "agricultural" appearing in the definition has been deleted in view of the new definition of "mundkar" proposed by the Committee.

Original Clause 2(g). — The clause defines the term "dwelling house". During its visits to the villages the Committee noticed that some houses of mundkars are comparatively bigger, as such five metres of land around and appurtenant will occupy a larger area. The Committee therefore felt that the bigger dwelling houses may include only land appurtenant not exceeding one and half metres around the dwelling house whereas the mundkar occupying the smaller houses may be given an area of one hundred sixty five square metres including the plinth area of the house. A distinction has also been made between big and small bhatkars. According to the new definition proposed, if the dwelling house is within the jurisdiction of a village Panchayat, and the total extent of land held by the bhatkar is more than one hectare, the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing. The term "fixed habitation" has been substituted by the term "house".

Original Clause 2(j). — The definition of the term "land" has been deleted as it is not considered necessary to give the term any restricted meaning.

New Clause 2(l) and 2(s). — An attempt has been made to define "local authority" and "Provedoria de Assistencia Publica" since they appear in the new clause 42 proposed by the Committee.

Original Clause 2(l). — The definition "member of the family" has been amended to make it specific that only those members of the family who are residing with the mundkar will get the benefit of the rights of the mundkar.

Original Clause 2(n). — The definition of "mundkar" has been revised to give protection to all persons who were residing with the consent of the bhatkar and at the same time to restrict the benefits envisaged in the Bill, to only those who does not own land exceeding one hundred sixty five square metres. The new definition also takes care of a possibility where the consent might have been given by a person acting or purporting to act on behalf of the bhatkar. The period of six months given in the explanation has been extended to one year.

Original Clause 2(r). — The definition of the term "tribunal administrative" has been deleted as it does not appear to be necessary.

Clause 3. — The existing clause enables the mundkar to transfer his rights to a member of his family. The definition of "mundkar" includes a member of his family. It is therefore not understood why mundkar is to be conferred with this right to transfer.

The Committee is of the opinion that all the members of the mundkar's family should enjoy equal rights in the dwelling house. The clause has therefore been amended thereby prohibiting transfer of rights by mundkar.

Clause 4(2). — The period of six months provided in item (i) for making application for restoration has been extended to one year. In item (ii) (a) the reference to Administrator of Concelho and Tribunal Administrative has been omitted as those courts were not in existence on 4th February, 1971.

The explanation has been slightly amended thereby making bhatkar liable to provide a similar dwelling house as far as possible in the same property.

In sub-clause (7) the expression "on conviction" has been inserted between the words "shall" and "be punishable".

Clause 9. — The clause has been deleted since it is felt that conferring on the mundkar, right of transfer of interest in the dwelling house may defeat the very purpose of the Bill. The remaining clauses have been renumbered.

Original Clause 11. — The clause deals with the case where on the appointed date a person other than a member of the family of a mundkar has been in occupation of whole or part of the dwelling house. The words "the whole or" has been deleted.

Original Clause 13. — A new sub-clause has been inserted in order to make it specific that the bhatkar shall continue to enjoy the usufructs of the trees standing on the land included in the dwelling house until the date of issue of certificate of purchase of the dwelling house to the mundkar. The marginal heading of the clause has also been revised as a consequential change.

Original Clause 14. — In view of the new clause 3 proposed by the Committee item (a) has been amended thereby stating that the mundkar will be liable to be evicted if he has transferred his interest in the dwelling house after the appointed date. It is also considered necessary to specify the extent of damage caused to the bhatkar's property which will make the mundkar liable to be evicted. Item (g) has been deleted as new item (a) will cover the ground contemplated in (g).

Original Clause 15. — The expression "appeal, proceeding in execution or other proceeding, as the case may be" appearing in sub-clause (3) has been deleted since it is felt that not only the appeal or the proceeding but the original suit itself should abate once the Mamlatdar decides that the person to be evicted is a mundkar. The expression "for eviction of the mundkar" has also been deleted as the fresh application need not necessarily be for eviction but can also be for the curtailment or for the non-enjoyment of any right mentioned in sub-clause (1) of clause 6.

Original Clause 16. — The clause has been slightly modified thereby enabling the bhatkar to shift his mundkar if he bonafide requires the land on which the dwelling house is situated not only for constructing a residential house but also for any industrial purpose for himself or for any member of his family.

The period of "thirty days" provided in sub-clause (6) has been extended to "sixty days" thereby providing more time for the mundkar to accept the offer.

Original Clause 17. — The word "in certain cases" has been deleted.

Original Clause 19. — The proviso to sub-clause (2) has been deleted as it appears to be redundant since the definition of the term "dwelling house" takes care of such possibilities. In view of the new definition of "mundkar" and in the light of the constitutional provisions sub-clause (3) has been amended. According to the new sub-clause proposed only those mundkars coming under agrarian reforms will be entitled for concessional rate of 25% of market value for the purchase of the dwelling house and other classes of mundkars has to purchase the dwelling house at market value. Sub-clause (4) has been modified. According to the new provision proposed by the Committee the purchase price can be paid either in lumpsum or in not more than ten equal annual instalments. The rebate given to the lumpsum payer has been done away with and six percent interest has been imposed on each instalment in case the purchase price is paid in instalments.

Original Clause 20. — A proviso has been added to sub-clause (3) thereby making it specific that in case an application for shifting is pending the Mamlatdar shall not pass any order for purchase before the disposal of that application. With a view to minimize fragmentation of land a new sub-clause has been incorporated thereby enabling the bhatkar to ask the mundkar to purchase another portion of the land in case the Mamlatdar is satisfied that the portion to be purchased is so located to cause inconvenience to the bhatkar. At the same time the mundkar has been given the right to opt for the portion to be purchased by him. Sub-clause (10) has been amended thereby enhancing the interest on the instalment overdue from 6% to 10%.

New Clause 20. — A new clause has been incorporated thereby prohibiting for a period of three years the mundkar's right to alienate by sale the dwelling house purchased by him. The clause also gives bhatkar the right of preemption if the mundkar intends to sell the dwelling house on the expiry of three years.

Clause 22. — The expression "except if such decree or order is issued in favour of the mortgagee to whom

such interest was mortgaged and for repayment of the debt to which the mortgage relates" has been deleted, as in view of the new clause 3 proposed by the Committee the interest in the dwelling house can not be mortgaged.

Clause 27. — The explanation has been added to specify that "interim order" contemplated in the clause shall not include injunction order and such orders shall be subject to appeal and revision.

Clause 32. — A new item has been inserted in sub-clause (2) in order to include occupation of the mundkar as one of the particulars to be contained in the register. The clause has further been amended to provide the bhatkar and any other person interested in the land in which the dwelling house is situate an opportunity to be heard, before deciding the application for registration.

Clause 42. — The clause, which empowers the Government to remove difficulties arising in giving effect to the provisions of the Act, has been deleted and a new clause has been inserted thereby exempting from the provisions of the Bill the land held by Government, Government of any State in India, Government of India, a local authority, Comunidade, Provedoria da Assistencia Publica.

Clause 44. — The reference to the "Tribunal Administrative" has been deleted.

The Report was considered and adopted by the Committee in its meeting held on 10th March, 1975.

Assembly Hall,

Panaji,

10th March, 1975.

PRATAPSING RANE

Chairman

MINUTE OF DISSENT

by

Shri J. B. Rao, MLA

The report, in the first place besides being sketchy is not well drafted. The drafting of the Bill as amended by the Committee also leaves much to be desired. It is a general practice to express gratitude for the persons and associations who took pains to submit their memoranda and to appear for examination before the Committee. This practice is not followed.

Once all the persons, who reside in their dwelling houses with the consent of the owner of the land where such homes are built upon and once the item (j) of Clause 2 defining the term 'land' is omitted, one fails to appreciate the reason why the items of clause 2 defining the terms "agricultural labourer" "village artisans", "agricultural land" and "agricultural" have been retained.

I do not agree that the area around the dwelling house and appurtenant thereto should be reduced to 1.5 square metres and that the extent of land to be included in the definition of the dwelling house should be limited to 165 sq. metres or 200 sq. metres according to the total area of land owned by the bhatkar. In this regard, my party United Goans has always stood for a larger area to be allotted to the mundkar as can be seen from the note of dissent attached to the Report of the Commission on the problem of mundkars, constituted under the Chairmanship of late Shri Tony Fernandes. We should remember that a mundkar requires land not only for the purpose of his dwelling house but also for the purpose of his cattle-shed, stocking hey or having his liquor still, bathroom, toilet etc.

Explanation to item (n) of clause 2 of the Bill is not consonance with Section 9 of the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971. It grants a fresh opportunity to the bhatkar, who had not taken any action against a person who was continuously residing in the land of the bhatkar for more than six months before 4-2-1971, to take action for eviction of such person within one year from the date of commencement of the Act, into which the present Bill may be passed.

I am in favour of the mundkars being converted into the owners of the dwelling houses on the appointed day. The system of mundkarism should be abolished forthwith. No compensation shall be paid to the bhatkar who has average annual income of Rs. 25,000/- or onwards. The compensation may be paid to the bhatkar whose average income is below Rs. 25,000/- and this compensation should come from the Consolidated Fund of Goa, Daman and Diu, as was done in the case of Land Reforms enacted for and enforced in the districts of Daman and Diu. Such compensation may be or may not be or may partly be recovered from the mundkar on easy terms.

The Bill as amended by this Committee tilts heavily in favour of bhatkars, who will have the right to shift the mundkar land the right to re-acquire the land from the mundkar. He will also have the right to the market value of the site, in a number of cases, while the Goa, Government takes no steps whatsoever to freeze the price of the land or to allot sites to landless persons for building their dwelling houses.

I am afraid that the Bill will be a perennial source of protracted litigation between the bhatkars and the mundkars. And that is not in the interest of either of them, as it will create social tensions in each village.

My opposition to various provisions of the Bill is based on principles and, therefore, I thought it necessary to add this note of dissent to this Report.

J. B. RAO, M. L. A.

MINUTE OF DISSENT

by

Shri Eduardo Faleiro and Shri R. S. Fernandes

We regret we cannot agree to the conclusions of the Select Committee for the following reasons:—

1. The restrictions placed on the shifting of the mundkar's dwelling house to another site will cause further pulverisation of agricultural land in this territory where, as stated in the Report of the Land Reforms Commission, "most of the lands are held in small pieces and the average holding is believed to be not more than 2 acres". The immediate result will be an increase of uneconomical holdings and stagnation of the level of our Agricultural production.

2. It is the bounden duty of Government to grant loans to the mundkars wherever they intend to purchase their dwelling-houses. The power to grant such financial assistance should not be left to the uncontrolled discretion of Government as sought to be done by clause 21 of the Bill.

3. No provision is made for appeal and revision to judicial authorities from the orders of the Mamlatdar and of the Collector under the Bill. We feel that the appellate authority should have judicial qualifications and experience equivalent to those required from a District Judge and revisional powers should be vested in the Judicial Commissioner's Court. The Mamlatdar and Collectors or Deputy Collectors being executive officers generally do not possess any legal background

and particularly the lower ranks, are sometimes amenable to instructions from their hierarchical superiors which cannot find a place in a sound system of administration of justice.

EDUARDO FALEIRO, MLA.

ROQUE SANTANA FERNANDES, MLA.

[Note. — Deletions made by the Select Committee are shown in square brackets, and additions and substitutions made are underlined].

The Goa, Daman and Diu Mundkars (Protection from Eviction) Bill, [1973] 1975

(Bill No. 10 of 1973)

A BILL

to provide for better protection to mundkars [including agricultural labourers and village artisans] against eviction from their dwelling houses and for granting them the right to purchase the same and to make certain other provisions connected therewith —

Whereas it is expedient to give better protection to the mundkars [including agricultural labourers and village artisans] against eviction from their dwelling houses and to grant them the right to purchase such houses with the sites where such houses have been built at a reasonable price;

Whereas it is expedient to abolish the system of free service [connected with the agricultural land] rendered by mundkars and turn it into remunerated one;

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the [Twenty-fourth year] Twenty-sixth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. **Short title, extent and commencement.** — (1) This Act may be called, the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, [1973] 1975.

(2) It extends to the whole of the district of Goa of the Union territory of Goa, Daman and Diu.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. **Definitions.** — In this Act, unless the context otherwise requires —

(a) "Administrative Tribunal" means the Administrative Tribunal constituted under the Goa, Daman and Diu Administrative Tribunal Act, 1965;

6 of 1965

(b) "agricultural labourer" means a person whose principal means of livelihood is the income he gets as wages in connection with the agricul-

tural operations he performs and who has neither a [homestead] house nor any land, either as owner or as tenant in possession, on which he could erect a [homestead] house;

(c) "agriculture" with its grammatical variations and cognate expressions, includes horticulture, the raising of crops of coconut, arecanut, cashew or mango gardens and dairy farming;

(d) "agricultural land" means the land used either for the purpose of agriculture or for purposes ancillary thereto;

[(d)] (e) "appointed date" means the date on which this Act comes into force;

[(e)] (f) "bhatkar" means a person who owns [agricultural] the land on which [a] the mundkar has a dwelling house;

[(q)] (g) "[Senior] Chief Town Planner" means an officer appointed by the Government to enforce Town Planning Regulations in the Union territory of Goa, Daman and Diu;

[(f)] (h) "Collector" means the Collector of the district and includes any other officer appointed by the Government to exercise and perform the powers and functions of a Collector under this Act;

[(g)] (i) "dwelling house" means the house [fixed habitation] in which mundkar resides with a fixed habitation, whether such house [habitation] was constructed by the mundkar at his own expense or at the bhatkar's expense or with financial assistance from the bhatkar and includes —

(i) (a) the land [side] on which the dwelling house is standing [;] and [ii] the land around and appurtenant to such dwelling house, subject to a maximum limit of [five metres, if the land is within the jurisdiction of a village Panchayat, and two metres, if it is not within such jurisdiction] one and half metres, from the outer walls of the dwelling house:

Provided that, where the distance between the outer walls of the dwelling house of the mundkar and of the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house or houses of one or more mundkars, is less than three metres the land appurtenant to such dwelling house shall be half of the land lying between the outer walls of the dwelling house of such mundkar and the bhatkar or between the outer walls of the dwelling house of such mundkar and the outer walls of the dwelling house or houses of such other mundkar or mundkars, as the case may be; or

[Provided that, where there is on the appointed date in the property of the bhatkar, at a distance less than double the aforesaid limit a dwelling house of another mundkar, the land appurtenant to such dwelling house shall be half

the land lying between the outer walls of the two dwelling houses;]

(b) One hundred and sixty five square metres of land including the land on which the dwelling house is standing:

Provided that where the dwelling house is within the jurisdiction of a village Panchayat and the total extent of land held by the bhatkar is more than one hectare the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing:

Provided further that where there is on the appointed date in the property of the bhatkar, the house of the bhatkar or a dwelling house of one or more than one mundkar, and the total extent of the land is inadequate to provide each of them the extent indicated in this clause, the dwelling house shall include, in the absence of any agreement, the land apportioned in equal shares, as far as practicable, by the Mamlatdar.

Explanation I. — The option contemplated under this clause shall be exercised by the mundkar in the manner prescribed.

Explanation II. — For the purpose of this clause "house" means an entity in itself and shall not include a part of a building; and

[(iii)] (ii) the customary easement, if any, which the residents of the dwelling house have been enjoying for access to a public road or a well or any other place; [and]

[(iv)] the house, hut or any structure with its materials wherein the mundkar resides;]

[(h)] (j) "factory" has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948; Central Act
63 of 1948

[(i)] (k) "Government" means the Administrator of the Union territory of Goa, Daman and Diu appointed by the President under article 239 of the Constitution;

[(j)] "land" means any land used either for purpose of agriculture or for purposes ancillary thereto and includes, waste land, forest land and land meant for pasture;]

(l) "local authority" means a municipal council established under the Goa, Daman and Diu Municipalities Act 1969 or a village panchayat established under the Goa, Daman and Diu Village Panchayats Regulation, 1962; 7 of 1969
9 of 1962

[(k)] (m) "Mamlatdar" has the meaning assigned to it in clause (c) of section 2 of the Goa, Daman and Diu Mamlatdar's Court Act, 1966; 9 of 1966

[(l) "member of family" shall mean, in the case of a joint family, any member of such family and, in other cases, spouse, descendants, parents, brothers and sisters and their spouses and descendants,]

(n) "member of the family" means —

(i) in relation to a mundkar who is an individual, his spouse, son, unmarried daughter and includes father, mother, grandson, widowed daughter, widowed grand-daughter solely dependent on the mundkar for maintenance;

(ii) in relation to a mundkar who is a joint Hindu family, the members of such a family;

(iii) in relation to joint owners other than a joint Hindu family, the members of the family as indicated in sub-clause (i) in relation to each of such joint owners;

[(m)] (o) "mine" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; Central Act
35 of 1952

[(n)] (p) "mundkar" means a person who, has neither a house nor any land exceeding in extent one hundred sixty five square metres, in possession either as owner or as tenant and who with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar [especially for the purpose of cultivation of, or for the purpose of watching and protecting, an agricultural land of the bhatkar,] lawfully resides with a fixed habitation in a dwelling house [on such agricultural land] with or without obligation to render any services to the bhatkar and includes a member of his family [and agricultural labourer and a village artisan,] but does not include —

(i) a person paying rent to the bhatkar for the occupation of the [dwelling] house;

(ii) a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer's residence;

(iii) a person employed in a mill, factory, mine, workshop or a commercial establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine, workshop or commercial establishment; and

(iv) a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a care-taker of the said house or for purposes of maintaining it in habitable condition.

Explanation. — A person shall be deemed to be lawfully residing with the consent of [a] the bhatkar in a dwelling house if such person resides in it for a period exceeding [six months] one year from the appointed date and the bhatkar has not initiated any proceedings, during

the said period of [six months] one year, to evict such person from the dwelling house, through a competent court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person.

[(o)] (q) "person" includes a joint Hindu Family;

[(p)] (r) "prescribed" means prescribed by rules made under this Act;

(s) "Provedoria de Assistencia Publica" means the Institute of Public Assistance established under the enactment Legislative Diploma No. 1984 dated 14th April, 1960;

[(s)] (t) "village artisan" means a person whose principal means of livelihood is the income he derives from working as an artisan in a village and who has neither a [homestead] house nor any land, either as owner or as tenant in possession, on which he could erect a [homestead] house.

CHAPTER II

Rights and Liabilities

3. Rights of a mundkar to be heritable.—The rights of a mundkar in his dwelling house shall be heritable and shall not be transferable. [only to a person who is a member of his family].

4. Bar to eviction from a dwelling house and restoration of possession.—(1) Notwithstanding anything to the contrary provided in any custom, usage, contract, decree or order of any court or tribunal or any law, no mundkar shall be evicted from his dwelling house except in accordance with the provisions of this Act.

(2) Any mundkar, who was in occupation of a dwelling house on the 4th February, 1971 and was evicted from such dwelling house thereafter but before the appointed date, shall be entitled to the restoration of such dwelling house, if—

(i) he makes an application to the Mamlatdar, in the prescribed form, within [six months] one year from the appointed date, for the restoration of such dwelling house; and

(ii) the bhatkar is not able to prove that—

(a) the mundkar was evicted from the dwelling house in execution of an order of the [Administrator of Concelho or Tribunal Administrativo or the] Mamlatdar or the Administrative Tribunal or a Civil Court; or

(b) the mundkar was paid by the bhatkar any consideration in cash or kind or given an alternative site for the construction of a dwelling house or an alternative dwelling house;

(c) the dwelling house has not been destroyed, dismantled or removed.

Explanation.—For the purposes of sub-clause (c) if it is proved to the satisfaction of the Mamlatdar that the dwelling house was destroyed, dismantled or removed in order to defeat the purposes of this Act, the bhatkar shall be liable to provide a similar

dwelling house at his own cost in the same property and if not possible in his own nearest property. If the bhatkar does not possess such land the Mamlatdar may provide for the same, following the provisions under section [17.]16.

(3) Any mundkar, who is in possession of a dwelling house on the appointed date but is evicted thereafter in contravention of the provisions of this Act, may, within one year from the date of his eviction, apply to the Mamlatdar in the prescribed form, for the restoration of his dwelling house.

(4) On receipt of an application under sub-section (2) or sub-section (3), the Mamlatdar shall, after holding such inquiry as may be prescribed, decide whether the applicant is entitled to the restoration of the dwelling house and may pass such order thereon as he deems fit. The Mamlatdar may also order that the bhatkar, who unlawfully evicted the mundkar, shall pay such compensation to the mundkar as is payable by the bhatkar to him under sub-section(7).

(5) No order under sub-section (4) shall be passed by the Mamlatdar, unless the person against whom the order is proposed to be passed has been given a reasonable opportunity of being heard in the matter.

(6) Notwithstanding anything contained in the foregoing provisions, where the Collector is satisfied that a mundkar has, for reasons beyond his control, omitted to take steps for restoration of possession within the time limit specified in sub-section (2) or sub-section (3), as the case may be, he may, on his own motion or on the application made by the mundkar, within one month from the date the omission is known to him, condone the delay and direct the Mamlatdar to pursue the matter for the restoration of the dwelling house and he may after holding such inquiry as may be prescribed, pass such order thereon as he deems fit:

Provided that, no action shall be taken by the Collector under this sub-section, after a period of one year from the time limit specified in sub-section (2) or sub-section (3), as the case may be.

(7) Any person, who evicts or causes the eviction of a mundkar, in contravention of sub-section (1), or, in any manner, disturbs or interferes with the customary easement or other right which a mundkar is entitled to enjoy under section 6, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both and shall be liable also to pay compensation to the mundkar for the damages caused to him by his eviction, or the disturbance or interference with the customary easement or other rights which he is entitled to enjoy.

(8) Any person, who attempts to contravene or abets the contravention of the provisions of sub-section (1), of section 6, shall be deemed to have contravened the said provisions.

(9) Any person who does not restore the possession to the mundkar in pursuance of an order made under sub-section (4) or sub-section (6), shall, in addition to any other penalty to which he may be

liable, be summarily removed by the Mamlatdar, who thereupon, shall restore the possession to the mundkar.

5. Relief in certain cases of threatened wrongful dispossession. — (1) Any mundkar in possession of his dwelling house, who apprehends that he may be dispossessed of the dwelling house by or on behalf of the bhatkar contrary to the provisions of this Act, may, in the prescribed manner, apply to the Mamlatdar for an order safeguarding his right to possession.

(2) On receipt of such application, if the Mamlatdar after holding such inquiry as may be prescribed, is satisfied that the applicant is entitled to continue in possession, he may, by order, direct the bhatkar or the person acting or purporting to act on behalf of the bhatkar to refrain from disturbing the possession of the mundkar otherwise than in accordance with the law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar, by affidavit or otherwise, that the bhatkar or the person acting or purporting to act on behalf of the bhatkar is threatening the mundkar with the aim of evicting him from his dwelling house, the Mamlatdar may, by order, grant a temporary injunction restraining the bhatkar or such person from evicting the mundkar or threatening him or otherwise causing him injury, until the final disposal of the pending proceeding or until further orders.

6. Right of mundkar to enjoy supply of power or water or any customary easement, etc. — (1) (a) Notwithstanding anything contained in any law or in any contract, or in any judgement, decree or order of any court or tribunal, no bhatkar, either by himself or through any person acting or purporting to act on his behalf shall, without just or sufficient cause, cut off, withhold, or interfere with any supply of electricity or water or any customary easement enjoyed by the mundkar, immediately before the appointed day in respect of his dwelling house.

(b) If any such supply or easement is interrupted by any act or omission of the bhatkar, the mundkar, within six months from the date on which the cause of action arose, may make an application to the Mamlatdar for an order directing the restoration of such supply or customary easement and the Mamlatdar may, after holding such inquiry as may be prescribed, pass such order as he considers fit.

(2) When any mundkar apprehends that the bhatkar may act in contravention of the provisions of sub-section (1), he may apply to the Mamlatdar for the grant of an injunction restraining the bhatkar from so acting and, on such application, the Mamlatdar, if he is satisfied that it is so require in the interests of justice, grant an injunction or pass such other as he deems fit.

(3) In the enjoyment of any right of supply or customary easement, the mundkar shall not disturb the bhatkar in the enjoyment of the adjoining portion of his property, around the mundkar's dwelling house. If the mundkar so disturbs the bhatkar, he shall be liable to pay to the bhatkar the compensation for the loss caused thereby as may be fixed by the Mamlatdar in the prescribed manner.

7. Mundkar to have right to repairs, maintain and improve his dwelling house. — A mundkar shall have a right to maintain, repair, improve or reconstruct his dwelling house without, in any way, increasing the plinth area thereof. He shall have, also, the right to have electricity supply and supply of pipe water, on the same terms and conditions as are applicable to any owner of a house.

8. Mundkar not to change the use of the dwelling house. — A mundkar shall not, without the written consent of the bhatkar, use the dwelling house for a purpose other than the purpose for which it was being used on the appointed date.

[9. Mundkar not to alienate his rights in any manner.] — (1) A mundkar shall not be entitled to alienate, by sale, gift, exchange, mortgage, lease or in any other manner whatsoever, his interest in the dwelling house to a person other than the member of his family, without the consent of the bhatkar.

(2) An alienation made in contravention of sub-section (1) shall be null and void].

[10.] 9. Transfer of property by bhatkar. — If the bhatkar sells, exchanges, mortgages, or leases, or in any manner transfers, his property where the dwelling house is situated, the rights of the mundkar in the dwelling house shall not, in any way, be affected by such transfer.

[11.] 10. Lease holder of a mundkar how to be dealt. — Where a person not being a member of the family of a mundkar has been in occupation of [the whole or] a part of the dwelling house on the appointed date, he shall be deemed to be a tenant of the mundkar. In such cases, the provisions of the law governing the relations of landlord and tenant of residential premises, for the time being in force in the area in which the dwelling house is situated, shall apply to such tenant.

[12.] 11. Free services by mundkars to be abolished. — Notwithstanding anything existing in any custom, usage, contract, decree or order of any court or tribunal or in any law in force, all mundkars shall, as from the appointed date, be free to render or not to render to the bhatkar any service as agricultural labourer, domestic servant, watch and ward or in any other capacity and, for every service so rendered the mundkar shall be entitled to be paid by the bhatkar such remunerations as may be mutually agreed upon by them.

[13] 12. [Mundkar to pay rent to the bhatkar. —] Rights of the bhatkar to receive rent and to enjoy usufructs. — (1) Every mundkar, if the bhatkar so desires, shall be liable to pay rent determined under sub-sections (3) and (4) to the bhatkar for the occupation of the dwelling house. The rent shall become payable from the day the bhatkar intimates in writing to the mundkar of his intention for the collection of rent:

Provided that, where the mundkar was on the appointed date, allowed to reside in the dwelling house without any obligation to render any service to the bhatkar, he shall not be liable to pay any rent. The burden of proof, whether the mundkar had or had not the obligation to render any service to the bhatkar, shall lie on the latter.

(2) In case of any dispute regarding the rent to be paid by the mundkar to the bhatkar, the same shall be fixed by the Mamlatdar, under sub-section (3) upon an application made by any of the interested parties.

(3) The rent payable by the mundkar, per year, shall not exceed the rent which will be computed by the Mamlatdar, in the following manner:—

(a) He shall first determine —

(a) the market value as on the 4th February, 1971 of the land occupied by the dwelling house;

(ii) the value of the materials, if any supplied by the bhatkar, at the time they were supplied;

(iii) the assistance in cash, if any, given by the bhatkar for setting up the dwelling house;

(iv) the payments, if any, made by the mundkar to the bhatkar towards the materials or cash assistance given by the bhatkar.

Explanation. — The onus of proving, whether any material was supplied or cash assistance was given to the mundkar, shall be on the bhatkar.

(b) The Mamlatdar shall then add up items (i), (ii) and (iii) mentioned in clause (a), deduct therefrom item (iv) and divide the balance by twelve. Two percent of amount so arrived at or Rs. 50/- in the municipal area or Rs. 30/- in Panchayat area, whichever is less shall be the rent payable per year by the mundkar.

(4) The rent determined under sub-section (3) shall be ordered to be paid by the Mamlatdar either annually within a month from the expiry of the year for which the rent is due or monthly within seven days from the expiry of the month for which the rent is due, according to the choice of the mundkar.

(5) Notwithstanding the payment or rent under this section and until the dwelling house is purchased by the Mundkar, he shall continue to be a mundkar subject to the provisions of the Act.

(6) The bhatkar shall be entitled to enjoy the usufructs of the trees standing in the land included in the dwelling house until the date of issue of certificate of purchase of the dwelling house to the mundkar, if he was enjoying the same on the appointed date.

[14.] 13. Grounds on which a mundkar can be evicted from his dwelling house. — (1) No mundkar shall be liable to be evicted from his dwelling house, except on any one or more of the following grounds namely:—

(a) that he has [sold] transferred his interest in the dwelling house after the appointed date; [to a person other than a member of his family].

(b) that the mundkar has, without the written consent of the bhatkar, changed the use of his dwelling house in contravention of section 8;

(c) that the mundkar or any member of his family residing with him in the dwelling house has caused damage to the [the destruction of any] property of the bhatkar which, in the opinion of

the Mamlatdar, is not less than twenty five thousand rupees;

(d) that the mundkar or any member of his family residing with him in the dwelling house has been guilty of such acts and conducts which are a nuisance to the bhatkar or any other person residing in the property of the bhatkar or in the neighbourhood;

Explanation. — For the purposes of this clause, "nuisance" shall be deemed to include any act which constitutes an offence under the Suppression of Immoral Traffic in Women and Girls Act, Central Act 104 of 1956.

(e) that the mundkar or any member of his family has, whether before or after the appointed date, built, acquired vacant possession of, or been allotted, a residence within the area to which the Act applies and, under the terms of construction, acquisition or allotment there is no restriction, for all the members of the mundkar residing with him in the dwelling house, from occupying such residence and the residence is, in the opinion of the Mamlatdar, reasonably sufficient for the occupation of all the members of the mundkar's family residing with him in the dwelling house;

(f) that neither the mundkar or any member of his family has been residing in the dwelling house for a continuous period of one year;

[(g) that the mundkar has let or assigned his entire dwelling house to another person without the prior consent of the bhatkar;]

[(h)] (g) that the mundkar has refused to shift to another site, as provided under sub-section (6) or sub-section (8) of section [16] 15 or under section [17] 16.

(2) A bhatkar who seeks to evict the mundkar on any of the grounds specified in sub-section (1), shall, within six months from the date the cause of action arose, apply in the prescribed form to the Mamlatdar for an order of eviction against the mundkar.

(3) On receipt of an application under sub-section (2), the Mamlatdar shall after issuing a notice to the mundkar and after holding an inquiry, pass such order thereon as he deems fit:

Provided that, in any case falling under clauses [(h)] (g) of sub section (1), if the Mamlatdar is satisfied that the mundkar was unable to shift to the new site, for reasons beyond his control, he shall extend the time for the purpose of shifting by such period as he may consider necessary and, thereupon, the application shall be rejected.

(4) The mundkar evicted from his dwelling house under this section shall be entitled to remove any material belonging to him and used in the dwelling house, unless the bhatkar, at any stage, offers to pay to the mundkar the value of such materials as may be fixed by the Mamlatdar or agreed upon between the bhatkar and the mundkar and pays such value in cash within six months from the date the order of eviction becomes final.

[15.] 14. Transfer of pending suit or other proceedings for eviction. — (1) All suits, appeals, pro-

ceedings in execution of decree or order and other proceedings for the eviction of a mundkar or a person who has therein claimed to be a mundkar or for the curtailment or for the non-enjoyment of any right mentioned in sub-section (1) of section 6, pending in any court, on the appointed date, shall be transferred to the Mamlatdar within whose jurisdiction the dwelling house, from which the eviction is sought, is situated.

(2) The Mamlatdar, [on receipt] to whom a suit, appeal, proceeding in execution or other proceeding is so transferred under sub-section (1), shall enquire into and first decide the question whether the person to be evicted is a mundkar or not and if his decision is that such person is not a mundkar, the suit, appeal, proceeding in execution or other proceeding shall be re-transferred to the court from which it was transferred to the Mamlatdar.

(3) If the Mamlatdar decides that the person to be evicted is a mundkar, he shall declare the suit, [appeal, proceeding in execution or other proceedings, as the case may be,] to abate and [advice] direct the bhatkar to make a fresh application [for eviction of mundkar] under this Act, if the bhatkar so desires.

[16.] 15. **Shifting of Mundkar from his dwelling house.** — (1) A bhatkar may apply to the Mamlatdar for shifting his mundkar from the dwelling house on the ground that the bhatkar bona fide requires the land on which the dwelling house is situated for constructing a residential house or for any industrial purpose for himself or for any member of his family.

Explanation. — In this sub-section, a member of the family means, —

(i) in relation to the bhatkar who is an individual, his spouse, his descendants and their spouse if any;

(ii) in relation to the bhatkar who is the head of a joint Hindu family, the member of such family;

(iii) in relation to joint owners, other than a joint Hindu family, the members of the family as indicated in clause (i), in relation to each of such joint owners.

(2) The mundkar shall not be shifted from his dwelling house under sub-section (1), unless the bhatkar offers him, in exchange, —

(a) (i) an area of land equal to the [land under his] dwelling house subject to a minimum of two hundred square metres, [and a maximum of four hundred square metres,] at a distance not exceeding two kilometres from his dwelling house and the Mamlatdar is satisfied that the land is suitable for a dwelling house; and

(ii) half the cost of construction of the new identical dwelling house, in the land offered in exchange, as subsidy. The remaining half of the cost of construction can be borrowed by the mundkar from the Government or such other institutions as may be prescribed. The estimated cost of construction shall be decided by the Mamlatdar after making such inquiry as he deems necessary; or

(b) to construct a similar dwelling house, within a distance of two kilometres, from his dwelling house, the plan of which is approved by the Mamlatdar, taking into consideration the reasonable requirements of accommodation by the mundkar and his family residing in the dwelling house; or

(c) an accommodation in any existing building, in the property of the bhatkar, or at any place within a distance of two kilometres, which the Mamlatdar considers, having regard to the shortage of residential accommodation in the locality, to be adequate for the mundkar and his family members residing with him in the dwelling house; or

(d) cash compensation as may be mutually agreed between the bhatkar and the mundkar for shifting from the dwelling house.

(3) On receipt of an application under sub-section (1), the Mamlatdar shall hold an inquiry in the prescribed manner and satisfy himself that the ground specified in that sub-section exists. If he is not so satisfied he shall reject the application.

(4) If the Mamlatdar is so satisfied, he shall further satisfy himself, after making such inquiry as he deems necessary, whether the bhatkar has made an offer as provided in sub-section (2) to the mundkar and whether the mundkar is prepared to accept such offer.

(5) If the bhatkar has not made or is not prepared to make an offer as provided in sub-section (2), the Mamlatdar shall reject the application.

(6) If the bhatkar has made or is prepared to make an offer as provided in sub-section (2) and the mundkar does not accept it within [thirty days] sixty days from the date the Mamlatdar intimates the offer to the mundkar in writing, the Mamlatdar shall order the mundkar to be evicted from the dwelling house, within six months from the date of such order.

(7) If the offer made by the bhatkar is accepted by the mundkar within the period specified in sub-section (6), the Mamlatdar shall order the mundkar to shift to the new site within such reasonable period as the Mamlatdar may fix, taking into consideration the time required for constructing the house on the new site, where such construction is required to be made, or, as the case may be, for the completion of the construction or arrangement of an alternative accommodation.

(8) If the mundkar does not shift from the dwelling house within the period fixed under sub-section (7), the Mamlatdar shall, after being satisfied, by holding such inquiry as he deems necessary, that the mundkar has not shifted to the new site, or as the case may be, to the alternative accommodation in spite of the new dwelling house or the alternative accommodation being ready for occupation, order the mundkar to be evicted from the dwelling house.

(9) If the shifting is done in pursuance of clause (a) or clause (b) of sub-section (2), the mundkar shall be entitled to the full ownership and possession of the land with the dwelling house to which he is shifted and also to the registration of such land in his name, and thereupon, as soon as he shifts to his new dwelling house, he shall cease to be a mundkar,

(10) (a) For the purposes of clause (d) of sub-section (2) the Mamlatdar shall call both the bhatkar and the mundkar for the settlement of the compensation by mutual agreement and for fixation of the date on which the mundkar should hand over the dwelling house to the bhatkar upon the payment of the agreed compensation in cash. Such settlement, if arrived at, shall forthwith be reduced to writing by the Mamlatdar in the form of an agreement, recording the amount of compensation payable by the bhatkar, the due date and such other particulars as may be necessary. Such agreement shall be read out and explained by the Mamlatdar to the parties concerned and shall be signed or otherwise authenticated by the Mamlatdar and the parties.

(b) In case there is no agreement between the bhatkar and the mundkar, the application of the bhatkar shall be rejected by the Mamlatdar.

(11) An agreement thus made under sub-section (10), shall, after the date of its making, be registered under the Registration Act, 1908, by the Mamlatdar in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil Court. Central Act
16 of 1908

[17.] 16. Allotment of land by Government [in certain cases]. — (1) When, [in certain cases] after holding such inquiry as may be prescribed and for reasons to be recorded in writing, if the Mamlatdar reaches the conclusion that the best alternative to solve the dispute between the bhatkar and the mundkar is to resettle the mundkar in some other land, he shall, with the prior approval of the Government and in prescribed manner, proceed further to find out if such land is available at a distance not exceeding two kilometres from the present dwelling house of the mundkar.

(2) (a) If the land referred to in sub-section (1) exists, the Mamlatdar shall prepare a report in the prescribed manner and propose to the Government the assignment of such land to such mundkar intended to be resettled, at a [nominal] value as may be prescribed. At the same time, he shall issue a notice to the bhatkar and mundkar, informing them of his intention to resettle the mundkar in some other place.

(b) In the case referred to in clause (a), the bhatkar shall pay to the Government the cost of such land. The bhatkar shall, also pay to mundkar, as subsidy, half the cost of construction of a new similar dwelling house on the plot to be allotted to him and the remaining amount shall be borrowed by the mundkar from the Government or such other institutions as may be prescribed.

(c) The estimated cost of construction shall be decided by the Collector after making such inquiry as he deems necessary.

(3) The report prepared by the Mamlatdar under sub-section (2) shall be submitted to the prior approval of the [Senior] Chief Town Planner and the area of the land referred to in sub-section (1) shall not exceed such extent as may be prescribed in this behalf keeping in view the requirements of rural and town planning.

(4) (a) If the land proposed to be allotted under sub-section (2) is a private

land, the Government may notify its intention to acquire the land for rehabilitating the displaced mundkar. On the issue of such notification, the provisions of Land Acquisition Act, 1894, shall apply as if the notification was a notification issued under section 4 of the said Act. Central Act
1 of 1894

(b) If the land proposed to be allotted under sub-section (2) is Government land or Comunidades land, then, notwithstanding anything contained in any law for the time being in force, the grant shall be made only with the approval of the Government on a proposal submitted by the Mamlatdar in the prescribed manner.

(5) Once the land is directed to be acquired under section 7 of the Land Acquisition Act, 1894, or the approval of the Government to grant the proposed land is communicated to the Mamlatdar, as the case may be, he shall forthwith cause the notice to be given to the bhatkar to deposit within a fixed period and in the prescribed manner the value of the plot as well as the subsidy to be granted to the mundkar. A notice shall also be served by the Mamlatdar on the mundkar informing about his decision to shift him to another site granted by the Government and shall give him such reasonable period as he may fix, taking into consideration the time required for the construction of the dwelling house in the new site where such construction is to be made, for the purpose of such shifting. The mundkar shall also be directed to apply for the loan if required by him for purpose of construction, under section 21. Central Act
1 of 1894

(6) After the land is acquired or is granted by the Government, the Mamlatdar shall give the possession of the same to the concerned mundkar and thereupon the mundkar shall be entitled to the ownership and possession of the land to which he is directed to shift and also the registration of the land in his name.

(7) If the mundkar does not shift from the dwelling house within the period fixed under sub-section (5), the Mamlatdar shall, after being satisfied, by holding such inquiry as he deems necessary that the mundkar has not shifted to the new site inspite of the new dwelling house being ready for occupation, order the mundkar to be evicted from the dwelling house.

(8) A mundkar who is resettled under the provisions of this section shall cease to [hold the title of] be a mundkar as soon as he shifts to his new dwelling house.

[18.] 17. Surrender by mundkar. — (1) Any mundkar may surrender his right over the dwelling house if the following conditions are satisfied: —

(i) it is made by the mundkar in writing and is admitted by him before the Mamlatdar;

(ii) it is made voluntarily and in good faith to the satisfaction of the Mamlatdar;

(iii) it is approved by the Mamlatdar.

(2) Where the Mamlatdar is of the opinion that the conditions mentioned in sub-section (1) are not satisfied, he may, after giving a reasonable opportunity to the bhatkar to show cause against taking action under this sub-section, and after holding such inquiry as he may deem fit, by order, refuse to approve the surrender.

[19.] 18. **Right of mundkar to purchase the dwelling house.** — (1) Notwithstanding anything to the contrary contained in any law for the time being in force, a mundkar shall, subject to the provisions of this [section] Act have the right to purchase the dwelling house occupied by him.

(2) The maximum extent of land around or appurtenant to the dwelling house which a mundkar is entitled to purchase under this section shall be as indicated under sub-clause [(ii)] (i) of clause [(g)] (i) of section 2:

[Provided that, where the land available for purchase is less than the extent so indicated the mundkar shall be entitled to purchase only the land available for purchase].

(3) The purchase price payable by the mundkar for his dwelling house shall be [twenty-five per cent of] the market value of the dwelling house purchased and the improvement thereon, other than the improvement, if any, belonging to the mundkar:

Provided that, when the house, hut or any structure with its materials belong, wholly or partly, to the mundkar, the corresponding value shall be deducted from the market value and, in such case, the purchase price shall be twenty-five per cent of the balance left after deducting the corresponding value from the market value:

Provided further that when a mundkar has been permitted to occupy the dwelling house by the bhatkar for the purpose of cultivation of or for the purpose of watching and protecting, an agricultural land of the bhatkar and is actually rendering such service and continue to render such service with or without remuneration or where a mundkar is an agricultural labourer or a village artisan, then the purchase price payable by such mundkar and a member of his family shall be twenty-five per cent of the market value payable.

(4) The purchase price payable under sub-section (3) in respect of the dwelling house shall be paid either in lumpsum or in not more than ten equal annual instalments:

Provided that where the purchase price is paid in instalments each instalment shall bear an interest of six per cent per annum.

[Provided that, it shall be open to the mundkar to pay the entire purchase price in lumpsum, in which case, the amount payable shall be only ninety per cent of the purchase price].

(5) The market value of the dwelling house, shall be decided by the Mamlatdar, after making such inquiry as he deems necessary and in the prescribed manner.

[20.] 19. **Procedure for purchase under section 19.**

— (1) A mundkar willing to purchase the dwelling house occupied by him shall apply to the Mamlatdar within whose jurisdiction the dwelling house is situated.

(2) An application under sub-section (1) shall be in such [from] form and shall contain such particulars as may be prescribed.

(3) The Mamlatdar shall, after giving notice to the bhatkar of the land in which the dwelling house is situated and other person interested in the land and after such inquiry as may be prescribed, pass such orders on the application as he deems fit:

Provided that where an application under sub-section (1) of section 15 in respect of the dwelling house is pending, the Mamlatdar shall not pass any order under this sub-section before the disposal of that application.

(4) Where the mundkar applies under sub-section (1) for the purchase of his dwelling house, and the Mamlatdar is satisfied on the application made by the bhatkar, within 30 days of the date of receipt of notice by him, that the portion to be purchased is so located as to cause inconvenience to the bhatkar, the Mamlatdar may require the mundkar to purchase another portion of the land:

Provided that the mundkar shall have the right to opt for the portion to be purchased by him:

Provided further that the mundkar shall not be entitled to opt for any other portion which is not adjoining the boundaries of land, except with the consent of the person in possession of the land:

Provided also that if the mundkar purchases another portion of the land, the bhatkar shall be liable to pay the price of the dwelling house, if any, erected by the mundkar and the cost of shifting the mundkar to such portion.

[(4)] (5) An order under sub-section (3), allowing an application shall specify —

- (i) the extent and measurement of land corresponding to the dwelling house which the mundkar is entitled to purchase;
- (ii) the purchase price payable by the mundkar and the mode of payment;
- (iii) the amounts due to the bhatkar or other persons interested in the land;
- (iv) the value of encumbrances subsisting or claims for maintenance or alimony charged on the land allowed to be purchased by the mundkar;
- (v) the amount payable to the holder of the encumbrance or the person entitled to the maintenance or alimony and the order of priority in which amount is payable;
- (vi) such other particulars as may be prescribed.

[(5)] (6) Where the right, title and interest of the person in possession of the land in which the dwelling house is situated or any other person in-

interested in the land form part of the security for any encumbrance or charge for maintenance or alimony the Mamlatdar shall, for the purpose of determining the value of the encumbrance or charge for the maintenance or alimony relating to the portion in respect of which purchase is allowed, apportion the entire encumbrance or charge for the maintenance or alimony between the land in which the dwelling house is situated and the portion allowed to be purchased, in proportion to the value of the two portions.

[(6)] (7) The purchase price payable by the mundkar shall be distributed according to the following provisions:—

(a) Where the right, title and interest of the bhatkar is subject to any encumbrance or charge for maintenance or alimony, the purchase price shall be first paid to such person interested in such encumbrance or charge for maintenance or alimony, in the order of priority fixed under clause (v) of sub-section (4) and the balance of the amount, if any, shall be paid to the bhatkar.

(b) If the total amount of such encumbrance, maintenance or alimony is more than the compensation payable to the bhatkar, the whole amount shall be reserved for payment to the holder of the encumbrance or the person entitled to the maintenance or alimony and no amount shall be paid to the bhatkar. After this is done, the dwelling house of the mundkar shall be declared free from any encumbrance or charge for maintenance or alimony.

(c) Where a person entitled to the purchase price or the value of the encumbrance, maintenance or alimony dies before it is paid to him it shall be paid to his legal representatives.

(d) Where the person entitled to receive the purchase price or the value of the encumbrance is a private Trust or endowment or a minor or a person suffering from legal disability or a limited owner, the purchase price or the value of the encumbrance may, notwithstanding anything contained in any law for the time being in force, but subject to any general directions that the Government may give, be deposited for and on behalf of such person with such authority or bank as may be prescribed.

(e) Where before any court or other authority any suit or other legal proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the purchase price or the amount of encumbrance or maintenance or alimony payable under this section, the court or other authority may require the Mamlatdar to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such court or other authority.

[(7)] (8) When an application under sub-section (1) has been allowed and the purchase price is determined by an order of the Mamlatdar under sub-section (3), the mundkar shall deposit with the Mamlatdar,

(i) where the purchase price is proposed to be paid in a lumpsum the entire amount due, within one year; or

(ii) where the purchase price is proposed to be paid in instalments, the first instalment thereof, within six months from the date on which the order of the Mamlatdar under sub-section (3) has become final. The second and subsequent instalment shall be deposited with the Mamlatdar with intervals of one year and in the manner prescribed:

Provided that the Mamlatdar may, on application by the mundkar before the expiry of one year or six months, as the case may be, extend the period for making such deposit:

Provided further that the Mamlatdar may, on application by the mundkar, before the expiry of one year or six months, as the case may be extend the period for making such deposit, so however that the period so extended shall not exceed three months.

[(8)] (9) After the order of the Mamlatdar under sub-section (3) has become final and on the deposit of the last instalment of the purchase price or on the deposit of the purchase price in a lumpsum, the Collector shall issue a certificate of purchase in such form and containing such particulars as may be prescribed, and thereupon the right, title and interest of the bhatkar shall, in respect of the dwelling house allowed to be purchased, vest in the mundkar free from all encumbrances or charges.

[(9)] (10) Where a mundkar fails to deposit the first instalment or the lumpsum, as the case may be, on or before the due date, the order of the Mamlatdar under sub-section (3) shall stand cancelled and thereupon the mundkar shall not be entitled to purchase the dwelling house.

[(10)] (11) (a) If the second and subsequent instalments of the purchase price along with the interest, prescribed under sub-section (4) of section 18, are not deposited on the due dates, the amount of such instalment shall bear interest at the rate of [six] ten per cent per annum from that date till the date of deposit of the instalment.

(b) If any such instalment remains unpaid for a period more than two years, Mamlatdar, on the application of the bhatkar, may, for reasons, to be recorded in writing, pass an order cancelling the order passed under sub-section (3) and, thereupon the mundkar shall not be entitled to purchase the dwelling house and, all the amounts, [if any,] deposited by the mundkar with the Mamlatdar, whether disbursed or not to the bhatkar, shall be refunded to the mundkar.

20. Mundkar's right to alienate.— (1) A mundkar shall not be entitled to alienate, by sale the dwelling house purchased by him, in pursuance of the provisions of this Act, within a period of three years from the date of issue of certificate of purchase and any transaction made in contravention thereto shall be null and void.

(2) When mundkar intends to sell the dwelling house purchased by him after the expiry of the period mentioned in sub-section (1) he shall give notice of his intention to the bhatkar in the prescribed manner and shall specify the price at which the sale

is to take place and call upon him to state within ninety days of the receipt of the notice whether he is willing to buy the dwelling house at the price specified.

(3) The bhatkar may within ninety days of the receipt of the notice signify in the prescribed manner his readiness to purchase the land at the price specified in the notice and thereupon a contract to purchase the land at the said price shall be deemed to have been concluded between the bhatkar and the mundkar.

(4) If the bhatkar fails within the period specified in sub-section (2) to signify his acceptance as provided in sub-section (3), the mundkar shall be free to sell the dwelling house to any person at a price not lower than that set out in the notice.

(5) Any sale by a mundkar to a person other than the bhatkar without giving the notice required by sub-section (2), or before the expiry of the period of the said notice or at a price lower than that set out in the notice as the case may be shall be void.

21. Grant of loan by Government to a mundkar regarding his dwelling house. — (1) The Government may, subject to due appropriation being made in this behalf, grant, on such terms and conditions as may be prescribed, a loan to a mundkar for the purchase of his dwelling house or for the construction of a new one on an alternative site given to him under sections [16, 17 or 19.] 15, 16 or 18.

(2) The Government may, when it considers necessary so to do, also arrange the required loan assistance to a mundkar from the Life Insurance Corporation or other institution advancing loans for housing purposes.

22. Bar to attachment, seizure or sale by process of court. — The interest of mundkar in his dwelling house shall not be liable to be attached, seized or sold in execution of a decree or order of a Civil Court. [except if such decree or order is issued in favour of the mortgagee to whom such interest was mortgaged and for the repayment of the debt to which the mortgage relates.]

CHAPTER III

Power, functions, appeals, etc. and maintenance of registers

23. Commencement of proceedings. — Save as otherwise expressly provided by or under this Act, all inquiries and original proceedings before the Mamlatdar shall be commenced by an application which shall contain the following particulars: —

(a) the name, age, profession and place of residence of the applicant and the opposite parties;

(b) a short description and situation of the dwelling house in respect of which the application is being made;

(c) the circumstances out of which the cause of action arose;

(d) a list of the applicant's documents, if any, and of his witnesses and whether such witnesses are to be summoned to attend or whether the ap-

plicant will produce them on the day of the hearing; and

(e) such other particulars as may be prescribed.

24. Procedure. — (1) Subject to the other provisions of this Act in this behalf, the procedure to be followed by the Mamlatdar, the Collector, the Administrative Tribunal or the Government in all inquiries, appeals, applications for revision and other proceedings under this Act shall be such as may be prescribed.

(2) Every decision or order passed under this Act shall be recorded in the form of an order which shall state the reasons therefor.

(3) All inquiries and proceedings before the Mamlatdar, the Collector, the Administrative Tribunal or the Government shall be deemed to be judicial proceedings within the meaning of sections 193, Central Act 219 and 228 of the Indian Penal Code. 45 of 1860.

25. Execution of order for payment of money or restoring possession. — (1) Any sum, the payment of which has been directed by an order of the Mamlatdar, the Collector, the Administrative Tribunal or the Government, including an order awarding costs, shall be recoverable from the person ordered to pay the same as [an] arrears of land revenue.

(2) An order of the Mamlatdar evicting or shifting the mundkar from his dwelling house or restoring to him the possession or use of any land or dwelling house or the enjoyment of the customary easement or supply of electricity or water shall be executed in such manner as may be prescribed and by using such force as may be necessary.

(3) An order or decision of the Mamlatdar in execution proceedings shall, subject to appeal or revision, if any, be final.

26. Power to transfer proceedings. — The Collector, may, after due notice to the parties, by order in writing, transfer any proceedings under this Act pending before a Mamlatdar, from such Mamlatdar to any other Mamlatdar and the Mamlatdar to whom the proceedings are so transferred shall thereupon exercise jurisdiction under this Act in such proceedings.

27. Appeal. — From every original order, other than an interim order, passed by the Mamlatdar or the Collector under this Act, an appeal shall lie to the Collector or the Administrative Tribunal respectively, and the order of the Collector or the Administrative Tribunal, as the case may be, shall, subject to revision if any, under section 28 of this Act, be final.

Explanation. — For the purpose of this section "interim order" shall not include injunction order and such orders shall be subject to appeal and revision.

28. Revision. — (1) From every order, other than an interim order, passed in appeal under section 27 or under sub-section (2), a revision shall lie to the Administrative Tribunal or the Government, respectively and the order of the Administrative Tribunal or the Government, as the case may be, on such revision shall be final.

(2) Save as otherwise expressly provided under this Act, where no appeal lies under this Act, the Collector may, on his own motion or on an application made by an aggrieved person, or on a reference made in this behalf by the Government, at any time, call for the record of any inquiry or proceedings of any Mamlatdar for the purpose of satisfying himself as to the legality or propriety of any order passed by the Mamlatdar and as to the regularity of the proceedings and pass such order thereon as he deems fit:

Provided that no such record shall be called for, after the expiry of six months from the date of such order and no order of such Mamlatdar shall be modified, annulled or reversed unless reasonable opportunity has been given to the interested parties to appear and be heard.

29. Extent of powers in appeal or revision. — (1) The Collector or the Administrative Tribunal or the Government in appeal or in revision, may, confirm, modify or rescind the order in appeal or revision, or may pass such other order as may be legal and just in accordance with the provisions of this Act.

(2) The orders passed in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar under this Act.

30. Powers of Civil Courts to be exercised in conduct of inquiries and proceedings under this Act. — The Mamlatdar, the Collector, the Administrative Tribunal or the Government shall exercise in all inquiries, proceedings, appeals or revisions, the powers as are exercised by the concerned trial court, appellate court or a court exercising revisional jurisdiction, under the Code of Civil Procedure, 1908. Central Act
5 of 1908

31. Limitation and court fees. — (1) Every appeal or application for revision under this Act shall be filed within a period of sixty days from the date of the communication of the order of the Mamlatdar, the Collector or the Administrative Tribunal, as the case may be, and the provisions of sections, 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal or application for revision. Central Act
36 of 1963

(2) Notwithstanding anything contained in the Court fees Act, 1870, every application, appeal, or revision made under this Act to the Mamlatdar, the Collector, the Administrative Tribunal or the Government shall bear a court fee stamp of such value as may be prescribed. Central Act
7 of 1870

32. Register of mundkars. — (1) In respect of every village, the Government shall cause a register of mundkars to be prepared and maintained in the prescribed manner.

(2) The register shall contain the following particulars, namely: —

(a) the particulars and description of the dwelling house;

(b) the location of the dwelling house;

(c) the name and address of the bhatkar;

(d) the name and address of the mundkar;

(e) the nature and extent of service, rendered to the bhatkar or the amount of ground rent if any paid;

(f) the occupation of the mundkar;

[(f)] (g) the rights referred to under section 6;

[(g)] (h) such other particular as may be prescribed.

(3) The register shall be prepared and maintained by the Mamlatdar after such inquiry as may be prescribed.

(4) The Mamlatdar shall, before the preparation of the register, publish a notice, in every revenue village inviting applications from the mundkars for registration and to be presented before such date as may be specified in the notice or such further time as may be allowed by him:

Provided that if, at any time after the publication of the notice, it is found that a mundkar has failed to apply for registering his name the talathi within whose jurisdiction the dwelling house is situated, may, after making such inquiry as he considers necessary, propose to the Mamlatdar to enter the name of such mundkar in the concerned register of mundkars and the Mamlatdar shall dispose of the same as provided under sub-section (5).

(5) On receipt of the application within the time specified in the notice or within such further time as may be allowed by him, the Mamlatdar shall, give notice to the bhatkar and any other person interested in the land in which the dwelling house is situate, calling upon them to file objections, if any, and requiring them to appear at a time and date specified in the notice for inquiry into the application. [after such inquiry as may be prescribed, register the mundkar or reject the application.]

(6) On the dates specified in the notice or on any other date to which the enquiry may be adjourned, the Mamlatdar shall hear such of the persons who appear and after such inquiry as may be prescribed, register the mundkar or reject the application.

(7) The order of the Mamlatdar under sub-section (6) shall be published in the notice boards of the village Office of the village in which the dwelling house is situate and also in the local newspapers.

[(6)] (8) Any person aggrieved by the registration of a mundkar or by the refusal to register a person claiming to be a mundkar may, within sixty days from the date of registration or refusal, as the case may be, file an appeal to the Collector.

[(7)] (9) On receipt of an appeal under sub-section [(6)] (8) the Collector may call for the records of any proceeding under sub-section (6) and may make such inquiry or cause such inquiry to be made and may pass such orders thereon as he deems fit:

Provided that no order prejudicial to any person shall be passed without giving him a reasonable opportunity of being heard.

33. Presumptive value of the record.—An entry made in the register of mundkars prepared in accordance with the provisions of this Act and the rules made thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereafter.

CHAPTER IV Miscellaneous

34. Protection of action taken under the Act and bar of jurisdiction of Courts.—(1) No suit, prosecution or other legal proceeding shall lie against any officer for anything in good faith, done or intended to be done under this Act.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.

35. Suits involving issues required to be decided under this Act.—(1) If any suit instituted in any Civil Court involve any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decisions to the Civil Court and such court shall thereupon decide the suit in accordance with the procedure applicable thereof.

36. Bar on appearance by pleaders.—Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Mamlatdar or the Collector:

Provided that the Mamlatdar or the Collector may, in the interest of justice and for reasons to be recorded in writing, allow the parties to be represented at their own cost by a pleader:

Provided further that the fees for the pleader shall not be allowed as part of the costs in any such proceedings:

Provided also that if any officer of the Government is appointed or declared by a competent court or is authorised under any law for the time being in force as a guardian, administrator or manager of the property of a person who is under a legal disability or is incompetent or unable to manage or to act, such officer shall be entitled to appear through a representative authorised by him in writing in this behalf in any proceedings before the Mamlatdar or the Collector.

Explanation.—For the purpose of this section, the term "pleader" includes an advocate, attorney, vakil or any legal practitioner.

37. Penalty.—(1) Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, [1898] 1973 every offence under this Act shall be cognizable and such offence may, with the permission of the Court, be compoundable.

Central Act
2 of 1974
[5 of 1898]

38. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company", means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm means a partner in the firm.

39. Power to give directions.—(1) The Government shall have power to issue directions or orders to the Mamlatdar or the Collector to give effect to the provisions of this Act and the rules made thereunder.

(2) Any such direction shall be published in the Official Gazette and shall be laid as soon as may be, after it is issued before the Legislative Assembly of Goa, Daman and Diu while it is in session for a period of thirty days.

40. Delegation of powers.—The Government may, by notification in the Official Gazette, delegate all or any of the powers and duties conferred upon itself or upon any officer or authority under this Act, to any other authority, body or persons, subject to such conditions and restrictions, if any, as may be specified in the notification.

41. Act to over-ride other laws, etc.—The provisions of this Act shall have effect notwithstanding anything in any other law or any custom or usage or decree or order of a court, or any agreement or

contract, express or implied, inconsistent with the provisions of this Act.

[42. Power to remove difficulties. — (1) If any difficulty arises in giving effect to the provisions of this Act the Government may, by order, as occasion may require, make such provisions not inconsistent with the provisions of this Act as appear to it necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of three years from the appointed date.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before the Legislative Assembly of Goa, Daman and Diu while it is in session for a period of thirty days.]

42. Exemptions. — Nothing in this Act shall apply to the land owned or held by Government, Government of any other state in India, Government of India, a local authority, comunidade or Providoria da Assistencia Publica.

43. Power to make rules. — (1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly of Goa, Daman and Diu while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately

following, the Legislative Assembly agrees in making any modification in the rule or the Legislative Assembly agrees that the rule should not be made and notifies such decision in the Official Gazette, the rule shall, from the date of such notification, have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

44. Repeal and saving. — On and from the appointed date —

(a) "Diploma Legislative No. 1952 of 26th November, 1959," as in force on that date shall stand repealed and any proceedings pending thereunder before the "Mamlatdar" [or the "Tribunal Administrativo"] or any other authority shall abate,

(b) section 17 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 7 of 1964 shall stand repealed,

(c) the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 shall stand repealed and the provisions of sections 6 and 24 of the General Clauses Act, 1897; as applied to the Union territory of Goa, Daman and Diu by the Goa, Daman and Diu General Clauses Act, 1965 shall apply to such repeal. 12 of 1971 Central Act 10 of 1897 7 of 1965

Assembly Hall,
Panaji,
26th March, 1975.

M. M. NAIK
Secretary to the Legislative
Assembly of Goa, Daman and Diu